

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN J. O'CONNOR	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
TANDEM PERSONNEL, INC. and	:	
VANGUARD INVESTMENT GROUP	:	No. 99-902

ORDER-MEMORANDUM

AND NOW, this 16th day of August, 1999, defendant Vanguard Investment Group's motion for summary judgment is granted and the action is dismissed without prejudice.¹ Fed. R. Civ. P. 56.

On February 22, 1999, plaintiff John J. O'Connor filed this action under Title VII and the Age Discrimination in Employment Act. Jurisdiction is federal question. 28 U.S.C. § 1331.

Exhaustion of administrative remedies is a prerequisite to suing under Title VII and the ADEA. See West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995); Whalen v. W.R. Grace & Co. 56 F.3d 504, 506 (3d Cir. 1995). Generally, before bringing suit in federal court, a plaintiff must first file the charge with the EEOC and wait the requisite time periods. See 42 U.S.C. § 2000e-5(f)(1) (plaintiff may institute civil action if EEOC has not acted within 180 days after filing administrative charge); Walters v. Parsons, 729 F.2d 233, 236 (3d Cir. 1984) (Title VII plaintiff must "file a complaint with the EEOC and allow 180 days to pass

¹Judgment has been previously entered in favor of defendant Tandem Personnel, Inc. Order, June 29, 1999. Plaintiff had not complied with this court's order of April 21, 1999 requiring a more definite statement.

during which the EEOC will attempt to resolve the dispute without resorting to litigation."); 29 U.S.C. § 626(d) ("No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the [EEOC].").²

On June 26, 1997, plaintiff completed an EEOC questionnaire alleging discrimination by defendant. Def. mot., ex. A. However, it is undisputed that plaintiff's questionnaire was not formally docketed by the EEOC until July 14, 1999. Defendant had requested information and documents from the EEOC pertaining to charges made by plaintiff. Def. mot., ex. D, E, F; pl. submission. Accordingly, at this time plaintiff's administrative remedies have not been exhausted. This action must be dismissed without prejudice.

Edmund V. Ludwig, J.

²It is unclear whether plaintiff may file suit before the passage of the requisite time period if the EEOC has issued notice of right-to-sue. The question is whether a right-to-sue letter entitles a complainant to start suit before 180 days have elapsed. Compare Sims v. Trus Joist MacMillan, 22 F.3d 1059, 1063 (11th Cir. 1994) (plaintiff may sue under Title VII upon receipt of notice of right-to-sue prior to 180 days), and Pearce v. Barry Sable Diamonds, 912 F. Supp. 149, ___ (E.D. Pa. 1996) (same), with Martini v. Fed. Nat'l Mortgage Assn., ___ F.3d ___, ___ (D.C. Cir. 1999) (plaintiff may not sue before expiration of 180 days), and Robinson v. Red Rose Communications, Inc., 1998 WL 221028, at *3 (E.D. Pa. May 5, 1998) (same). The Third Circuit has not decided the issue. It is unnecessary to consider defendant's argument that this plaintiff must wait the full statutory time period irrespective of notice of right-to-sue inasmuch as no letter appears to have been issued.